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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6690 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5 - No

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A N PARMAR

Versus

STATE OF GUJARAT

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Appearance:

MR BP TANNA for Petitioner  
NOTICE SERVED for Respondent No. 1  
MR YN OZA for Respondent No. 3

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/07/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner who was then working as a Store Keeper in the PWD branch of the Baroda District Panchayat has challenged the promotion given to respondent No. 3 to the post of Store Keeper in the PWD branch of the Baroda District Panchayat as per the communication dated 4.10.1985 (Annexure VIII Pg. 64) and the order dated 23.11.1985 (Annexure VII Pg. 62) passed

by the District Development Officer, Baroda under which respondent No. 3 was given promotion to the post of Store Keeper with deemed date i.e. w.e.f. 7.7.1975 but without any arrears of difference of salary.

2. The aforesaid challenge is based on the following grounds :-

(i) Under the Recruitment Rules for the post in question as prevailing since 1977, respondent No. 3 was not eligible for promotion. Respondent No. 3 was also not given any promotion in the year 1975 which respondent No. 3 had challenged before the Gujarat State Civil Services Tribunal. The appeal was dismissed by the Tribunal. Special Civil Application No. 2586 of 1978 filed by respondent No. 3 for challenging the order of the Tribunal was also dismissed and, therefore, the District Panchayat could not have issued any promotion order which would set at naught the order of the Tribunal as well as the judgment of this Court.

(ii) Respondent No. 3 was given the promotion under challenge without consultation with the Gujarat Panchayat Services Selection Board in contravention of Rule 4 of the Gujarat Panchayat Service Selection Board (Consultative) Rules, 1964.

(iii) The promotion of respondent No. 3 was also in contravention of the Government Circular dated 16.11.1985 (Annexure "C" to the petition).

3. The petition is resisted by filling affidavit in reply of the District Development Officer, Baroda District Panchayat. The affidavit in rejoinder is also filed by the petitioner.

4. As regards the first contention, since the petitioner had made a representation against the promotion given by the District Panchayat to one J.M. Suthar in the year 1975 and since the said representation was not decided by the State Government, the representation stood transferred as an appeal before the Tribunal. Although the Tribunal dismissed the appeal on the ground of limitation, this Court specifically observed in the judgment dated 19.1.1979 in Special Civil Application No. 2586 of 1978 that since the petitioner had sent his representation to the District Development Officer, with a copy to the Development Commissioner on

7.7.1975 and the District Development Officer had rejected the representation of respondent No. 3 herein only on 8.6.1977, it cannot be said that the representation/appeal filed by respondent No. 3 on 2.8.1977 was barred by limitation. This Court specifically observed that the view taken by the Tribunal was not in accord with reason, justice, common sense and sound judgment. However, this Court dismissed the petition on the ground that the matter appeared to have become academic as J.M. Suthar (second respondent before the Court in that petition) was retransferred to another department and a Senior Clerk from the public works branch was appointed as a Store Keeper and that the post of Store Keeper had again fallen vacant which would be filled in in accordance with the Rules in force. Respondent No. 3 herein then filed Special Civil Application No. 521/79 before the Division Bench of this Court challenging the amendment to the Recruitment Rules made in the year 1977 and also making a grievance that his legitimate claim for promotion to the post of Store Keeper in the year 1975 was illegally overlooked by the District Panchayat. At the hearing of the said petition before the Division Bench, as per the communication dated 4.10.1985 (Annexure VIII) the District Panchayat agreed to give respondent No. 3 herein promotion to the post of Store Keeper with effect from 7.7.1975 and that is why respondent No. 3 herein came to be promoted to the post of Store Keeper with deemed date of 7.7.1975 without the arrears of difference of salary as per the impugned order dated 23.11.1985 (Annexure VII). In view of the above factual position and in view of the fact that the Division Bench of this Court did entertain Special Civil Application No. 521/79, it cannot be said that respondent No. 3 had lost in the previous litigation or that the promotion given by the District Panchayat to respondent No. 3 herein with effect from 7.7.1975 was in the face of the orders of this Court.

5. As far as the second contention is concerned, the stand of the District Development Officer is that consultation with the Gujarat Panchayat Services Selection Board is directory and that in any case in the matters of promotion the general course adopted is to give temporary promotion first and thereafter to obtain ex-post facto approval of the Selection Board. The affidavit to this effect was filed in 1985. There is nothing on record to show one way or the other whether approval was granted by the Gujarat Panchayat Service Selection Board, but since the matter is pending since 1985, the Court does not propose to adjourn the hearing of the petition on that ground alone. The District

Panchayat shall, therefore, look into the matter and consider the issue whether promotion of respondent No. 3 to the post of Store Keeper with effect from 7.7.1975 was approved by the Gujarat Panchayat Services Selection Board or not. The District Panchayat shall do so within three months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

6. As far as the third contention is concerned, the alleged breach was of the circular dated 16.11.1985 under which the Government had agreed not to make any promotions till the relevant orders under the agreements arrived at between the Associations of employees belonging to backward classes and the Associations of employees belonging to other categories were issued. It appears that that embargo was for a short temporary period and therefore, that contention need not be entertained now as admittedly that embargo was subsequently lifted.

7. In view of the aforesaid discussion, the petition is dismissed and Rule is discharged, subject to the direction in para 5 above regarding the approval of the Gujarat Panchayat Service Selection Board if not already obtained so far.

There shall be no order as to costs.

Sd/-

July 16, 1999 (M.S. Shah, J.)

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